Office-Supreme Court, U.S.
FILED
MAY 6 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-489

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1984

COMMONWEALTH OF PENNSYLVANIA
BUREAU OF CORRECTION

Petitioner

v.

UNITED STATES MARSHAL SERVICE, et al.,

Respondents

JOINT APPENDIX

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

LeRoy S. Zimmerman
Attorney General

Maria Parisi Vickers
Senior Deputy Attorney
General

Office of Attorney General
206 State Office Building
Philadelphia, PA 19130
(215) 351-2402

Attorneys for Petitioner

Rex E. Lee
Solicitor General

Department of Justice
Washington, D.C. 20530
(202) 633-2217

Attorney for Respondents

Petition for Certiorari Filed
September 24, 1984
Certiorari Granted February 19, 1985

45 pp

TABLE OF CONTENTS

	PAGE
Docket Entries -- United States District Court for the Eastern District of Pennsylvania.....	1a
Docket Entries -- United States Court of Appeals for the Third Circuit..	6a
Complaint.....	9a
Memorandum and Orders of United States Magistrate William F. Hall, Jr. Dated December 9, 1982.....	22a
Memorandum and Order of February 10, 1983 (Pages 46a to 65a of Appendix -- Petition for Writ of Certiorari)	
Judgment and Opinion of the United States Court of Appeals for the Third Circuit (Pages 1a to 45a of Appendix for Petition for Writ of Certiorari)	
Order of the United States Court of Appeals for the Third Circuit Dated August 29, 1984	42a

DOCKET ENTRIES -- UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Dist. Office: 313/2

Docket: Yr. '80; Number 2350

Filing Date: Mo. 06, Day 17, Year '80

J 3; N/S 550

Judge Number: JH 1325

Plaintiff

GARLAND, RICHARD,

Defendants

SULLIVAN, JOSEPH A. SHERIFF, DEPUTY SHERIFF SAULL, DEPUTY SHERIFF RODRIZGAS, DAVID OWENS (DIRECTOR OF INMATE SERVICES) THOMAS KELLY (WARDEN HOLMESBURG PRISON) GUARD BERSANE, GUARD HANNAH, GUARD OCEHSLE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE,
COMMONWEALTH OF PENNSYLVANIA, (54)
UNITED STATES MARSHALS SERVICE (54)
Cause: Civil Rights

Attorneys

For Plff: Angel Martinez, Esquire, 108 Dudley Avenue, Narberth, PA 19072

P.P. F. 4140, Drawer R, Huntingdon, PA 16652

For Deft: (51) Barbara Axelrod, Assistant City Solicitor, Rm. 810 UGI Building, 1401 Arch Street, Philadelphia, PA 19102, For Sullivan, Saull, Rodrizgas, Owens, Kelly, Bersane, Hannah and Ocehsle.

(43) Lawrence E. Fischer, Deputy General Counsel, United States Marshal Service, One Tysons Corner Center, McLean, VA 22102, for United States Marshals Service.

Susan Bricklin, Esquire, 3310 U.S. Courthouse 601 Market Street, Philadelphia, PA 19106, for United States Marshals Service.

Maria Parisi Vickers, Deputy Attorney General, 206 State Office Building, Philadelphia, PA 19130, for Commonwealth of Pennsylvania.

Proceedings

DATE Nr.

1980

Jun 18, Complaint filed.

Jul 11, Answer of all defendants, filed.

1982

May 10, Memorandum of Law of Intervenor, Pennsylvania Bureau of Correction and Ronald Marks on the issue of inmate transportation.

May 17, Plaintiff's Petition for a Writ of Habeas Corpus Ad Testificandum filed.

May 24, Plaintiff's Motion to Compel the Issuance of Writs of Habeas Corpus Ad Testificandum and Certificate of Service, Filed.

1982

Dec 9, Memorandum, Hall, Mag. and Orders that the Superintendent of the State Correctional Institution at Huntingdon shall produce Richard Garland for the Purpose of his giving testimony and participating in the trial on 1-24-83 at 10:00 A.M. in Courtroom 5-D, the Superintendent of the State Correctional Institution at Rockview shall produce Andre Morrison for the Purpose of his giving testimony and participating in the trial on 1-24-83 at 10:00 A.M. in Courtroom 5-D, the Superintendent of the State Correctional Institution at Dallas shall produce Delbert Orr, a/k/a Delbert Africa for the purpose of his giving testimony and participating in the trial on 1-24-83 at 10:00 A.M. in Courtroom 5-D, Filed. 12-9-82 Entered and copies mailed.

1983

Jan 5, U.S. Marshals Service's Motion to Intervene as Interested Third Party, filed.

Jan 5, U.S. Marshals Service's Motion for Reconsideration, Memorandum, filed.

Jan 6, Defts' memorandum in opposition to motion for reconsideration, memorandum of law, filed.

Feb 10, Memorandum, Hall, Mag., and Order that the motion of the U.S. Marshals Service for reconsideration of the Court's Orders of 12-8-82 is denied, except with regard to the order of 12/8/82 directing the production of Larry Harris, an inmate at Holmesburg Prison, which order is vacated, filed.

Apr 8, United States Marshals Service's Notice of Appeal, filed (U.S.C.A. 83-1283), 4/11/83 Copies to: R. Garland, An. Martinez, Esquire., L.E. Fischer, Esq., B. Axelrod, Esq, D. Spitz, Judge Hannum, Clerk, U.S.C.A.

Apr 20, Order that the Motion of the Commonwealth of Pa. and the United States Marshall's Service to intervene relative to the issues involved in the court's order directing the plff. and his witnesses be transported and produced for trial in this action are granted, nunc pro tunc, May 7, 1982 and February 19, 1983, respectively, filed. 4/21/83 Entered and Copies mailed.

1984

Jul 20, Certified copy of order USCA that judgment of this court is affirmed insofar as is requires the Marshal of this court to take into custody while in the federal courthouse state prisoner witnesses

whose presence is required for testimony in civil proceedings, etc., filed.

Aug 30, Certified copy of order of U.S. Court of Appeals dd. 8/29/84 amending the caption of the Opinion filed 6/27/84 & amending the judgment entered the same day by adding the following: U.S. MARSHALS SERVICE, Intervenor-Appellant COMMONWEALTH OF PA., BUREAU OF CORRECTION, Intervenor-Appellee, filed.

Docket Entries, Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Appeal from Eastern District of
Pennsylvania
Garland
Case No. 80-2350

Title of Case

GARLAND, RICHARD,

vs.

SULLIVAN, JOSEPH A. SHERIFF, DEPUTY SHERIFF SAULL, DEPUTY SHERIFF RODRIZGAS, DAVID OWENS (DIRECTOR OF INMATE SERVICES) THOMAS KELLY (WARDEN HOLMESBURG PRISON) GUARD BERSANE, GUARD HANNAH, GUARD OCEHSLE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE,
COMMONWEALTH OF PENNSYLVANIA, (54)
UNITED STATES MARSHALS SERVICE (54)
Appellant

Attorney for Appellant

Susan Bricklin, Esquire, 3310 U.S. Courthouse 601 Market Street, Philadelphia, PA 19106, for United States Marshals Service.

Barbara L. Herwig, Esq., Linda Jan S. Pack, Esq. Department of Justice, 10th and Pennsylvania Avenue, N.W., Washing-

ton, D.C. 20530, for United States Marshals Service.

Christine R. Whittaker, United States Department of Justice, P.O. Box 978, Washington D.C. 20044, for United States Marshal Service

Attorney for Appellees

Angel Martinez, Esquire, 108 Dudley Avenue, Narberth, PA 19072, for Richard Garland

Barbara Axelrod, Rm. 810 UGI Building, 1401 Arch Street, Philadelphia, PA 19102, For Sullivan, Saull, Rodrizgas, Owens, Kelly, Bersane, Hannah and Ocehsle.

Maria Parisi Vickers, Deputy Attorney General, 206 State Office Building, Philadelphia, PA 19130, for Commonwealth of Pennsylvania and Commissioner Marks.

Origin: Eastern

D.C. Docket: 80-2350

D.C. Judge: William F. Hall, Jr., U.S. Magistrate

Filed in D.C.: 6-17-80

Notice of Appeal filed: 4-8-83

Case Type: Civil Rights

Docketed: 4-27-83

Proceedings

DATE	
1984	
Jun	27, Judgment -- Affirmed insofar as it requires the Marshal of the D.C. to take into custody while in the federal courthouse state prisoner witnesses whose presence is required for testimony in civil proceedings in the federal court but is reversed insofar as, without a finding of special security circumstances, it required the Marshal to transport those witnesses between the county jail and the federal courthouse, filed.
Aug	29, Order (Gibbons & Becker, C.Js & Atkins, D.J.) amending the caption of the opinion, filed.
1985	
Feb	22, Order from S.C. allowing certiorari. Filed at S.C. No. 84-489. Justice Powell took no part in the consideration of this petition, filed. (ml)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD GARLAND	:	CIVIL ACTION
Plaintiff	:	
v.	:	
SHERIFF JOSEPH A. SULLIVAN, DEPUTY SHERIFF SAULL, DEPUTY SHERIFF RODRIZGAS, DAVID OWENS (DIRECTOR OF INMATE SERVICES) THOMAS KELLY (WARDEN HOLMESBURG PRISON) GUARD BERSANE, GUARD HANNAH, GUARD OCEHSLE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE, DEPUTY SHERIFF JOHN DOE,	:	
Defendants	:	NO. 80-2350

COMPLAINT

JURISDICTION

1. Jurisdiction is predicated upon this court pursuant to title 42 U.S.C. §1983, §1985; Title 28, §§1331-1343; First, Eighth and Fourteenth Amendments to the U. S. Constitution.

PARTIES

2. Plaintiff, Richard Garland, was and is at all times relevant hereto, an [sic] convicted prisoner captured and maintained within the confines of Holmesburg Prison located in the County of Philadelphia.

3. Defendant Sheriff Sullivan, was and is at all times relevant hereto, in charge of the Philadelphia Sheriff's Department and is responsible for the hiring, firing, training and direction of all deputy sheriff's [sic] within said department. He is being sued in his individual and official capacity.

4. Defendants Saull, Rodrizgas, and John Does are deputy sheriffs for the county of Philadelphia, and who at all times relevant hereto, were and are responsible of safely transporting prisoners to and from court. Said defendants are being sued in their individual and official capacity.

5. Defendant David Owens, at all times relevant hereto is "now" Superintendent of Philadelphia Prisons and is responsible for the safety, security and overall well being of all prisoners confined within said prisons. He is responsible for the hiring, firing training and direction of Philadelphia County Prison Guards. He is being sued in his individual and official capacity.

6. Defendant Thomas Kelly, at all times relevant hereto, was and is Warden at Holmesburg Prison, and is responsible for the safe and secure operation of said prison as well as maintaining the safety and security of its prisoners and supervising prison personnel. He is being sued in his individual and official capacity.

7. Defendants Hannah, Bersane and Ocehsle, at all times relevant hereto were and are guards at Holmesburg Prison

and are invested with the duty to establish and maintain safety and security of prisoners and prison. Said defendants are being sued in their individual and official capacity.

8. Defendants John Does, are deputy sheriff's [sic] for the county of Philadelphia and who at all times relevant hereto, were and are responsible for safely transporting prisoners to and from court. Said defendants are being sued in their individual and official capacity.

9. All defendants herein named and relevant to the foregoing complaint, were acting under the color of state law.

FACTS

10. On April 23, 1980, while waiting in the holding area of Holmesburg Prison to be transported to Philadelphia County Court; plaintiff was viciously attacked

by defendants Rodrizgas and Saull, without any provocation that could be attributed to the actions of the plaintiff.

11. As mentioned in preceding [sic] paragraph, plaintiff's being attacked was precipitated by said defendants conjured irritation when plaintiff displayed a "On the Move" button, which was pinned to his clothing. The button mentioned was not considered contraband nor did it bare [sic] any material that would signify same as being a security hazard of any kind.

12. Plaintiff contends that he is a supporter of the Move Organization, as taught through the religious order founded by "JOHN AFRICA", which is an established religion by all standards of life. That any button worn by plaintiff signifying his support for the natural order of life, should not be construed

as provocation to inflict cruel punishment and religious persecution upon his person and way of life as a human element. For example Catholics, Muslims, Jews, are in this prison, yet none of them recieve [sic] the treatment I recieved [sic].

13. While plaintiff was being subjected to the aforementioned attack by defendants Rodrizgas and Saull; defendants, John Does, Defendants Ocehsle, Bersane and Hannah stood idle and made no effort to restrain plaintiff's attackers; although said attack was unwarranted.

14. Upon arrival at City Hall Courthouse in Philadelphia; plaintiff was taken to the sheriff's cell room and separted [sic] from other prisoners who were transported along with him. Immediately after being separated from other prisoners; plaintiff was approached

by defendants Rodrizgas and Saull and six John Doe defendant deputy sheriff's [sic] who launched a second unprovoked and unwarranted physical attack upon plaintiff's person.

15. The compound result of both physical attacks upon plaintiff's person requied [sic] the reception of fifteen stitches in plaintiff's mouth, suffering an assortment of body and head bruises.

CLAIM FOR RELIEF UNDER U.S.C. 42 SECTION 1983

16. Paragragh's 1 thru 16 are re-stated and incorporated by reference herein.

17. The unwarranted physical beating attack endured by plaintiff at the hands of defendants herein named, constituted cruel punishment in violation of alleged constitutional rights which supposedly governs these United States and this

Commonwealth of Pennsylvania and its inhabitants of which plaintiff is one.

18. The avtion [sic] of defendants against plaintiff as stated herein, which were the results of plaintiff's religious beliefs, constitutes religious persecution in violation of both the U.S. and Pennsylvania Constitution.

19. A claim for relief is further-cited [sic] where the lingering effects of physical pain, mental anguish and religious degradation continue to cause suffering upon the being of plaintiff, as manifested through the cruel punishment and religious persecution inflicted by defendants.

20. Defendants Owens, Kelly, Bersane, Ocehsle, and Hannah are liable for damages in neglecting their duty to provide safety and security for plaintiff in the instant matter and protect him from unwarranted attacks while under the

jurisdiction of Holmesburg Prison, especially where the attackers are without legal authority to launch such attack.

CLAIM FOR RELIEF UNDER U.S.C. 42 SECTION 1985

21. Paragragh's 1 thru 16 and 17 thru 20 are restated and incorporated by reference herein.

22. The acts and actions of all the defendants herein named reveal that same did conspire to deprive plaintiff of his human and constitutional rights to be free from cruel punishment and religious persecution and to be provided due process and equal protection of law.

CLAIM FOR RELIEF UNDER U.S.C. 42 SECTION 1986

22. [sic] Paragragh's 1 thru 16 and 16 thru 20 are restated and incorporated by reference herein.

23. All defendants herein named in the forgoing [sic] cause of action were so situated that anyone or all of them could have acted to prevent plaintiff from suffering cruel punishment and religious persecution, without being afforded due process and equal protection of law; but same defendants failed and neglected to do so.

RELIEF

WHEREFORE, Richard Garland, requests this court to award the following relief:

Compensatory damages in the amount of one million cash American dollars or gold from all defendants named.

Punitive damages in the amount of one million cash American dollars or gold from all defendants named.

Declaratory damages in the amount of one million cash American dollars or gold from all defendants named.

/s/_____
Richard Garland
79-03284
8215 Torresdale Avenue
Post Office Box 6268
Philadelphia, Pennsylvania
19136

APPLICATION TO PROCEED IN FORMA PAUPERIS

I, RICHARD GARLAND, declare under the penalty of perjury, that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I declare that because of my poverty I am unable to pay the costs of said proceedin [sic] or to give security therefor and that I believe I am entitled to relief.

I presently am not employed and have not been employed since 12/12/78.

I have not received any income from a business, profession, in the form of rent payments, interests, dividends, pensions, annuities, social security benefits, support payments or other sources.

I do not own any cash or checking or savings accounts.

I do not own any real estate, stocks, bonds, notes, automobiles or other valuable property.

Due to my present financial situation, there is no-one dependant [sic] upon me, nor do I owe any other debts or obligations.

/s/
Richard Garland
79-03284
8215 Torresdale Avenue
Post Office Box 6268
Philadelphia, Pennsylvania
19136

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD GARLAND	:	CIVIL ACTION
Plaintiff	:	
v.	:	
SHERIFF SULLIVAN	:	
Defendant	:	NO. 80-2350

MEMORANDUM AND ORDERS

WILLIAM F. HALL, JR
UNITED STATES MAGISTRATE December 8, 1982

In this action[1] the plaintiff, an inmate at the State Correctional Institution at Huntingdon (Huntingdon), has alleged that his First and Eighth and Fourteenth Amendment rights were violated by the defendants when they allegedly beat him because of his support of MOVE. He now seeks the issu-

---

[1]The matter was originally assigned to Hon. John B. Hannum. On July 15, 1981 the parties consented to have the matter proceed before a United States Magistrate.

ance of a writ of habeas corpus ad testificandum in order to have himself and eight (8) incarcerated non-party witnesses transported to and from the courthouse so that they may appear at the trial of his case. For the reasons that follow, the petition will be granted but with limitations as to the number of witnesses who will fall within the scope of the writ.

The plaintiff proposes to give testimony and to represent himself at the trial aided by an "advisory counsel". It is well settled that prisoners have no absolute right to be present at the trial of civil rights actions. Moeck v. Zajackowski, 541 F.2d 177 (7th Cir. 1976); McKinney v. Boyle, 447 F.2d 1091 (9th Cir. 1971). As the Court explained in Price v. Johnston, 334 U.S. 266, 285, 68 S. Ct. 1049, 1060, 92 L.Ed. 1356 (1948), "Lawful incarceration brings

about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Among the rights identified by the Court as being so limited is the right given to parties in all courts of the United States to plead and manage their own cases personally. See: 28 U.S.C. Section 1654. However, a fair and effective adjudication of this case requires the presence of the plaintiff at the trial. For, without the assistance of the Court his appearance at the trial cannot be insured. The issuance of a writ of habeas corpus ad testificandum is such assistance that can be given to insure his appearance at the trial.

Under 28 U.S.C. §2241(c)(5) the court has the discretionary authority to secure the appearance of a state or federal prisoner by the issuance of a writ of habeas

corpus ad testificandum when it is necessary to bring him into court to testify or for trial. Jerry v. Francisco, 632 F.2d 252, 255 (3d Cir. 1980). In exercising that discretion, however, the court must weigh "the interest of the plaintiff in presenting his testimony in person against the interest of the state in maintaining the confinement of the plaintiff-prisoner." Jerry v. Francisco, supra at 255, quoting Stone v. Morris, 546 F.2d 730, 735 (7th Cir. 1976).

The Court in Jerry adopted the criteria employed in Stone v. Morris, supra, and held that the consideration of the issuance of the writ should take into account such factors as (1) the cost and inconvenience of transporting the prisoner; (2) the potential danger and security risk; (3) the substantiality of the matter at issue; (4) the need for an early determination of the

matter; (5) the possibility of delaying trial until the prisoner is released; (6) the integrity of the correctional system; and (7) the interests of the inmate in presenting his testimony live rather than by deposition. Id. at 255.

Upon application of these criteria to the factual background as it applies to the plaintiff himself, the issuance of the writ is deemed justified. Although the court does not have before it any data as to the cost of producing the plaintiff for the trial, the Commonwealth of Pennsylvania (Commonwealth) has intervened and alleged that it does not have sufficient resources to pay the costs attendant with the production and maintenance of the plaintiff during the trial. The Commonwealth's argument, however, fails to address any excessive costs attendant with producing this particular plaintiff but rather, it

argues that it suffers from a general fiscal insufficiency that would preclude it from producing the plaintiff. Clearly, whenever, the production of a prisoner is ordered, the expenditure of some funds is required, however, in balancing the cost and inconvenience to the Commonwealth against the interests of the prisoner, the question is not whether not producing the prisoner would be less expensive, because it always would be. Rather, the test is whether the production of the prisoner is likely to be excessive because of, e.g. the need for providing extra security. Such costs and inconvenience must then be weighed against the substantiality of the issues the plaintiff's claim presents. Here the plaintiff who has alleged serious violations of his constitutional rights has been before the court several times for preliminary

matters and has not presented any security problems nor exhibited behaviour that would lead the court to anticipate any abnormal security problems if he were to appear again for this trial. Although the cost and inconvenience of transporting the plaintiff from prison to this courthouse are probably significant, it has not been shown that the costs in this instance are excessive and outweigh the plaintiff's interest in presenting testimony and personally managing his own case.

Although there is not apparent need for an early determination of the issue in this case, a postponement of the trial until after the plaintiff is released from prison would be unfair. The plaintiff is currently serving a sentence of ten years and his release before that time is not foreseeable. A delay of the trial until then with the

possible unavailability of witnesses to the events complained of and/or the possible diminution of their memories after the passage of so many years would render a redress of the plaintiff's alleged constitutional injuries virtually unobtainable. The alternative of obtaining the plaintiff's testimony by deposition in lieu of his appearance in court is also unsuitable. The matter will be tried to a jury at the demand of the defendants. Because of the nature of the alleged misconduct of the defendants the credibility of all of the witnesses will, no doubt, be crucial and the jury should be given the opportunity of hearing and seeing the plaintiff as well as all of the witnesses to the alleged acts of the defendants. Testimony of the plaintiff by way of his deposition will not serve that purpose. Moreover, because the plaintiff will

represent himself at the trial, he will be an indispensable participant in the proceedings and not just a witness.

Finally, it is important once an inmate's action reaches the trial stage as is the case here, that a court take all reasonable steps necessary to insure that he receives the "fair day in court" to which he is entitled. Holt v. Pitts, 619 F.2d 558 (6th Cir. 1980). Here the plaintiff's presence in court is reasonably necessary to insure a fair adjudication of his claims. Accordingly, a writ of habeas corpus ad testificandum will be issued requiring his presence at the trial.

The plaintiff also requests the production of Larry Howard, Larry Harris, Andre Morrison and Delbert Africa all of whom are inmates of various penal institutions in Pennsylvania. These proposed witnesses will give eye witness testimony

which the plaintiff has described in his petition as noncumulative testimony which will describe different stages and aspects of the confrontation between the plaintiff and the defendants. In addition, Delbert Africa, according to the plaintiff, will testify about the plaintiff's physical condition immediately prior to and subsequent to the alleged beatings of the plaintiff by the defendants. The proposed testimony is not only relevant to the issues involved in the case, but is also of sufficiently high probative value to require its production to insure a fair adjudication of the plaintiff's claims. The same considerations that were applied in determining whether the writ should be issued to secure the appearance of the plaintiff, applies in determining whether the writ should be issued to secure the appearance of these nonparty

witnesses. Jerry v. Francisco, supra, at 255. Having applied those criteria, the court finds that the interest of the plaintiff in having these witnesses present at the trial to present the proposed testimony outweighs the interest of the Commonwealth in maintaining them in their respective institutions. Accordingly, the writ will be issued as to them as well.

The plaintiff has also requested the court to issue the writ to insure the appearance of Chuck Africa, Frank Africa, Conrad Africa, Phil Africa and Edward Africa all of whom are also inmates in various Pennsylvania penal institutions. The plaintiff proposes to present testimony by these witnesses as to his reputation for honesty and truthfulness. Generally, such evidence is not admissible in a civil proceeding under the Federal

Rules of Evidence (Rule 404). Although character evidence in support of credibility is admissible, it is admissible only when a witness' character for untruthfulness has been attacked. (Rule 608(a)). Inasmuch as the plaintiff will not be able to put these witnesses on in his case in chief and not at all unless his character for truthfulness is attacked, it cannot be said that their appearance is necessary to assure the fair adjudication of his claims. In view of the cost and inconvenience to the Commonwealth that would be attendant with producing them for trial, the court finds that the interest of the Commonwealth in maintaining them in their respective institutions outweighs the interests of the plaintiff in having them produced for the trial. Similarly, testimony of any or all of these witnesses to corroborate the plaintiff's own testimony

relative to his religious beliefs, as the plaintiff also proposes, would be, if admissible, of such limited probative value that it is also deemed not necessary for the fair adjudication of the plaintiff's claims. The interest of the Commonwealth clearly outweighs the interest of the plaintiff when considering whether any or all of these witnesses should be produced for trial for this added purpose. Accordingly, the plaintiff's petition insofar as it seeks the issuance of a writ of habeas corpus ad testificandum requiring the production of Chuck Africa, Frank Africa, Conrad Africa, Phil Africa and Edward Africa is denied.

The Court's orders requiring the production of the plaintiff, Larry Howard, Larry Harris, Andre Morrison and Delbert Africa for the trial of this matter accompany this memorandum. However, for clarity it is noted here that to be in

compliance with the orders, the custodians of the foregoing inmates shall transport them from their present institutions to the county prison nearest to this courthouse from whence the United States Marshal shall transport them to and from the courthouse for their appearance at the trial of the case. The U.S. Marshal shall also be responsible for maintaining custody of these prisoners while they are in this courthouse.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD GARLAND	:	CIVIL ACTION
Plaintiff	:	
v.	:	
SHERIFF SULLIVAN	:	
Defendant	:	NO. 80-2350

ORDER

AND NOW, to wit, this 8th day of December, 1982, it is ORDERED that the Superintendent of the State Correctional Institution at Huntingdon (Huntingdon) shall produce Richard Garland, F-4140, now confined at Huntingdon, for the purpose of his giving testimony and participating in the trial of the above captioned case beginning on Monday, January 24, 1983 at 10:00 A.M. in Courtroom 5-D, U.S. Courthouse, 601 Market Street, Philadelphia, PA. In producing Mr. Garland, it shall be the

responsibility of the Superintendent to transport him to the county jail nearest this courthouse. The U.S. Marshal shall then be responsible for transporting him to and from the county jail for his court appearances in this matter. The Marshal will also be responsible for maintaining custody of him while he is in the courthouse for the trial.

BY THE COURT:

/s/
WILLIAM F. HALL, JR.
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD GARLAND	:	CIVIL ACTION
Plaintiff	:	
v.	:	
SHERIFF SULLIVAN	:	
Defendant	:	NO. 80-2350

ORDER

AND NOW, to wit, this 8th day of December, 1982, it is ORDERED that the Superintendent of the State Correctional Institution at Rockview (Rockview) shall produce Andre Morrison now confined at Rockview, for the purpose of his giving testimony at the trial of the above captioned case beginning on Monday, January 24, 1983 at 10:00 A.M. in Courtroom 5-D, U.S. Courthouse, 601 Market Street, Philadelphia, PA. In producing Mr. Morrison, it shall be the responsibility of the Superintendent to

transport him to the county jail nearest this courthouse. The U.S. Marshal shall then be responsible for transporting him to and from the county jail for his court appearances in this matter. The Marshal will also be responsible for maintaining custody of him while he is in the courthouse for the trial.

BY THE COURT:

/s/
WILLIAM F. HALL, JR.
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD GARLAND	:	CIVIL ACTION
Plaintiff	:	
v.	:	
SHERIFF SULLIVAN	:	
Defendant	:	NO. 80-2350

ORDER

AND NOW, to wit, this 8th day of December, 1982, it is ORDERED that the Superintendent of the State Correctional Institution at Dallas (Dallas) shall produce Delbert Orr, a/k/a Delbert Africa, now confined at Dallas, for the purpose of his giving testimony at the trial of the above captioned case beginning on Monday, January 24, 1983 at 10:00 A.M. in Courtroom 5-D, U.S. Courthouse, 601 Market Street, Philadelphia, PA. In producing Mr. Orr, it shall be the responsibility of the

Superintendent to transport him to the county jail nearest this courthouse. The U.S. Marshal shall then be responsible for transporting him to and from the county jail for his court appearances in this matter. The Marshal will also be responsible for maintaining custody of him while he is in the courthouse for the trial.

BY THE COURT:

/s/
WILLIAM F. HALL, JR.
UNITED STATES MAGISTRATE

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 83-1283

GARLAND, RICHARD
v.
SULLIVAN, JOSEPH A. SHERIFF
DEPUTY SHERIFF SAULL
DEPUTY SHERIFF RODRIZGAS
DAVID OWENS (DIRECTOR OF INMATE SERVICES)
THOMAS KELLY (WARDEN HOLMESBURG PRISON)
GUARD BERSANE
GUARD HANNAH
GUARD OCEHSLE,
DEPUTY SHERIFF JOHN DOE
DEPUTY SHERIFF JOHN DOE
DEPUTY SHERIFF JOHN DOE
DEPUTY SHERIFF JOHN DOE
DEPUTY SHERIFF JOHN DOE
DEPUTY SHERIFF JOHN DOE
COMMONWEALTH OF PENNSYLVANIA
UNITED STATES MARSHALS SERVICE

United States Marshals Service,
Appellant

(D.C. Civil No. 80-2350)

Present: GIBBONS and BECKER, circuit Judges and ATKINS, District Judge[2]

It is ORDERED that the caption of the opinion of this Court filed June 27, 1984 and of the judgment entered the same day be amended by adding the following:

---

[2]Honorable C. Clyde Atkins, United States District Judge for the Southern District of Florida, sitting by designation.

UNITED STATES MARSHALS SERVICE
Intervenor-Appellant

COMMONWEALTH OF PENNSYLVANIA
BUREAU OF CORRECTION
Intervenor-Appellee

By the Court:

/s/ Circuit Judge

Dated: Aug. 29, 1984